

# Seeking Justice: An Empirical Map of Consumer Problems and Consumer Responses in Canada

Neil Vidmar

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# SEEKING JUSTICE: AN EMPIRICAL MAP OF CONSUMER PROBLEMS AND CONSUMER RESPONSES IN CANADA\*

BY NEIL VIDMAR\*\*

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## I. INTRODUCTION

Legal phenomena need to be viewed in their social context. Studying litigation independently of the mass of disputes from which legal cases emerge yields an incomplete understanding of the legal process. Although both of these propositions have gained fairly widespread acceptance among legal scholars, very little research bearing on the propositions has been undertaken with respect to Canada, particularly with respect to civil law. In this article, I report research on the extent to which Canadians experience consumer and related problems, and on their responses to those problems. The findings yield a tentative map of complaining and disputing behaviours that is germane to a number of issues that concern legal scholars and policy makers.

### A. *Theoretical Perspectives*

Legal Realism had a major impact on legal thinking by questioning the adequacy of legal scholarship that focused exclusively on doctrinal analysis. Realist scholars recognized that the study of

statutes and appellate decisions inadequately depicted the process and impact of law. As a consequence, they began to study the actual application of law in lower courts. Today it is recognized that the scope of study must go still further. Court activity, while undeniably important, constitutes only one small part of the human activity that is relevant to law.<sup>1</sup> For example, treating the trial as a paradigmatic structure for resolving disputes ignores the fact that only a small fraction of legal cases ever reach trial; the vast majority are settled in advance. An even greater number of potential legal cases are negotiated or otherwise resolved by lawyers before they reach the court's filing clerk. Still more potential cases may be resolved without the aid of lawyers at all. Finally, other potential cases may never result in a claim.

The concept of an iceberg can serve as a useful analogy to describe these levels of dispute activity.<sup>2</sup> At the tip of the iceberg are those cases decided by judge or jury while just above the waterline are those that are filed in the court. We know that the tip represents as few as five percent of cases that started at the water line, the rest being disposed of at various stages of the litigation process. But what is underneath the waterline? Just below the surface are those cases that are settled in lawyers' offices under "the shadow of the law." Further below are disputes resolved by other means such as mediation or arbitration. Then there are those that the disputing parties settle by themselves through face-to-face negotiations. Finally, at the base of the iceberg are the problems in human transactions that have been perceived by at least

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<sup>1</sup> For a recent discussion of this expanded perspective and its growing position in legal scholarship see L. Friedman, "The Law and Society Movement" (1986) 38 Stan. L. Rev. 763; R. Lempert & J. Sanders, *An Invitation to Law and Social Science* (New York: Longman, 1986); L. Friedman, *The Legal System: A Social Science Perspective* (New York: Russell Sage Foundation, 1975). For a similar perspective in Canada see Consultative Group on Research and Education in Law, *Law and Learning: Report to the Social Sciences and Humanities Research Council of Canada* (Ottawa: Social Sciences and Humanities Research Council of Canada, 1983); W. Bogart, "Empirical Studies and Procedural Law: The Law, in Fact" (presented to The Canadian Law and Society Association, Montreal, 31 May 1985) [unpublished].

<sup>2</sup> For a similar analogy see R.E. Miller & A. Sarat, "Grievances, Claims, and Disputes: Assessing the Adversary Culture" (1981) 15 L. & Soc'y Rev. 525.

one party as an injustice, but that have never developed into disputes.

The iceberg's base is an interesting area. It involves phenomena that may seem far from the legal scholar's traditional pursuits, but which, upon closer scrutiny, may be seen to be directly relevant to issues that are commonly discussed and debated. Consider first, how disputes arise. Felstiner, Abel, and Sarat have used the terms "naming," "blaming," and "claiming" to symbolize the stages of the process by which disputes arise out of the great mass of human transactions.<sup>3</sup>

Naming is the stage in which a party perceives that an injury or injustice has occurred, that a right has been violated. While some kinds of injuries are easily detectable, being hit by a bus, for example, others are far more subjective. One need only think about current issues involving women's rights, rights of the unemployed, of the handicapped, of the elderly, and compare them to their status even a decade ago to realize that experiences once considered "normal" are now defined as injuries or rights violations.

After an injury has been perceived, the next stage is locating the source of the injury, that is, ascribing blame. Sometimes people ascribe fault to themselves or accept the injury as their fate, but other times they ascribe blame to someone else, thus translating the injury into a "grievance." Arriving at the grievance stage, however, does not necessarily mean the injured party will go further. He or she may simply nurture the grievance or withdraw from the field. On the other hand, a claim for rectification may be made directly to the responsible party or to some third party; if this occurs, the claiming stage has been reached.

The claiming stage too has multiple possible outcomes. The complaineé may agree immediately that the claim is legitimate and attempt to provide compensation. Alternatively, the complaineé may reject the claim, totally or in part, whereupon we may say that a dispute has arisen. In the face of the dispute, the claimant may drop the claim, may enlist the aid of a third party, or take retaliatory action of a legal or illegal nature. The paths taken at

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<sup>3</sup> W.L.F. Felstiner, R.L. Abel, & A. Sarat, "The Emergence and Transformation of Disputes: Naming, Blaming and Claiming ..." (1981) 15 L. & Soc'y Rev. 631.

each of these stages are influenced by a host of psychological, social, economic, and institutional variables that have been described extensively in recent writings.<sup>4</sup>

The activities that occur below the waterline have considerable significance for legal policy making and legal scholarship. There has been much discussion of the capacity and limitations of Canadian legal institutions. On the one hand, it is sometimes asserted that we are in the midst of a litigation explosion and that Canadians are becoming a litigious lot.<sup>5</sup> On the other hand, it is claimed that many Canadians do not have access to justice. For example, with respect to consumer protection, it has been argued that there is a great disparity of resources between business and consumer,<sup>6</sup> and that remedy systems are inadequate.<sup>7</sup> It is charged that the least privileged members of society are the least likely to get justice — if they get it at all.<sup>8</sup> Similar claims have been made in debates about contingency fees, indemnity rules, pre-

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<sup>4</sup> See *ibid.*, D. Coates & S. Penrod, "Social Psychology and the Emergence of Disputes" (1981) 15 L. & Soc'y Rev. 655; N. Vidmar, "Justice Motives and Other Psychological Factors in the Development and Resolution of Disputes" in M.J. Lerner & S.C. Lerner, eds, *The Justice Motive in Social Behavior: Adapting to Times of Scarcity and Change* (New York: Plenum, 1981); K.O. Boyum, "The Etiology of Claims: Sketches for a Theoretical Mapping of the Claim-Definition Process" in K. Boyum & L. Mather, eds, *Empirical Theories About Court* (New York: Longman, 1983).

<sup>5</sup> W.A. Bogart, Book Review of *The Litigious Society* by Lieberman and *The Suing of America* by Marks (1982) 20 W. Ont. L. Rev. 359; M. Galanter, "Reading the Landscape of Disputes: What We Know and Don't Know (and Think We Know) About Our Allegedly Contentious and Litigious Society" (1983) 31 U.C.L.A. L. Rev. 4.

<sup>6</sup> J.S. Ziegel, "Future of Canadian Consumerism" (1973) 51 Can. B. Rev. 1919.

<sup>7</sup> W. Neilson, *The Future of Canadian Consumerism: A Retrospective and Prospective View* (Proceedings of the 10th Annual Workshop of Commercial and Consumer Law, 17-18 October 1980) [unpublished]; M.J. O'Grady, "Consumer Remedies" (1982) 60 Can. B. Rev. 549.

<sup>8</sup> W. Neilson, "The Small Claims Court in Canada: Some Reflections on Recent Reforms" (1982) 20 Alta. L. Rev. 475; see Ziegel, *supra*, note 6; R. Cooper & B. Kastner, "Access to Justice in Canada: The Economic Barriers and Some Promising Solutions" in M. Cappelletti & B. Garth, eds, *Access to Justice: A World Survey*, vol. 1 (Milan: Giuffrè, 1978) 247; G.W. Adams, "The Small Claims Court and the Adversary Process: More Problems of Function and Form" (1973) 41 Can. B. Rev. 583.

paid legal services, and lawyer advertising.<sup>9</sup> Based on these various assertions, there have been calls for the modification of laws, revisions of the means, organization and delivery of legal services, and the development of alternative institutions.<sup>10</sup>

All of the assertions described above, of course, involve assumptions about the frequency with which problems are experienced and about activities that do not involve the courts. They are, in fact, bald assertions about the empirical nature of transactions below the waterline of the legal iceberg. To the extent that these assumptions conform or vary with the true empirical shape of that iceberg's base, certain assertions may or may not have validity. To take one example in the area of consumer law, the claim that Canadians avoid the legal system assumes that there is a group of citizens "out there" who have unresolved grievances but who do not seek a legal remedy. Whether this assertion is valid or not would require an empirical survey of the relevant population. Such an assessment would allow us to determine if problems are going unresolved and to obtain more precise information about which specific problems go unresolved, ascertaining why they are not proceeding into a legal forum.

In brief, the extension of legal research to areas of problem development and dispute resolution is crucial to our understanding of law in society, to what it does and does not do.

### B. *Previous Empirical Research*

The social science technology necessary for undertaking research on the base of the iceberg is fairly well developed. In essence, it consists of in-depth interviews with representative members of the population regarding the problems they have

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<sup>9</sup> All of these topics are discussed in R. Evans & M. Trebilcock, eds, *Lawyers and the Consumer Interest* (Toronto: Butterworths, 1982).

<sup>10</sup> See O'Grady, *supra*, note 7; F. Zemans, "Recent Trends in the Organization of Legal Services" in W. Habscheid, ed., *Effectiveness of Judicial Protection and Constitutional Order* (Bielefeld: Giese King-Verlag, 1984); see Cooper & Kastner, *supra*, note 8.

actually experienced and what occurred as a result.<sup>11</sup> Utilizing these methods, researchers in the United States,<sup>12</sup> Australia,<sup>13</sup> and Great Britain<sup>14</sup> have undertaken some major attempts to discern the form and nature of pre-legal problems and disputing behaviour. The results of these studies have produced a wealth of data bearing on litigation rates, the processes by which people seek justice, and the extent to which problems are satisfactorily resolved. In Canada, however, only fragments of information exist.

Friedman<sup>15</sup> undertook a study of Alberta residents that assessed their knowledge about how to deal with problems involving government. However, the study is subject to criticism since it asked only about hypothetical rather than actual problems and responses. Friedland<sup>16</sup> conducted a study that examined people's understanding of the law using small samples of respondents from several Ontario cities. Moore undertook a more ambitious study of Canadians' knowledge and attitudes about the law, but most of its content

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<sup>11</sup> For methodological and substantive discussions of the methodology issues see D.M. Trubek, "Studying Courts in Context" (1981) 15 L. Soc'y Rev. 485; H.M. Kritzer, "Studying Disputes: Learning from the CLRP Experience" (1981) 15 L. & Soc'y Rev. 503; Miller & Sarat, *supra*, note 2 at 525; J. Ladinsky & C. Susmilch, Conceptual and Operational Issues in Measuring Consumer Disputing Behaviour (Disputes Processing Research Program, University of Wisconsin Law School, 1981) [unpublished].

<sup>12</sup> Miller & Sarat, *supra*, note 2; B.A. Curran, *The Legal Needs of the Public: The Final Report of a National Survey* (Chicago: American Bar Foundation, 1977).

<sup>13</sup> J. Fitzgerald, A Comparative Empirical Study of Potential Disputes in Australia and the U.S. (Disputes Processing Research Program, University of Wisconsin Law School, 1982) [unpublished].

<sup>14</sup> D. Harris *et al.*, *Compensation and Support for Illness and Injury* (Oxford: Clarendon Press, 1984).

<sup>15</sup> K. Friedman, *Complaining: Comparative Aspects of Complaint Behavior and Attitudes Toward Complaining in Canada and Britain* (Beverly Hills: Sage Publications, 1974).

<sup>16</sup> M.L. Friedland, "The Search for Legal Information" in *Access to Law* (Toronto: Carswell/Methuen, 1975).



involved matters relating to the criminal law.<sup>17</sup> Vidmar and Flaherty<sup>18</sup> attempted to determine the extent to which a sample of Canadians had problems involving violations of privacy. Finally, Samuels and Vidmar<sup>19</sup> studied the disposition of consumer complaints that were lodged with the Ontario Ministry of Consumer and Commercial Relations. While these last two studies were concerned with the experience of actual problems, each was very narrow in its focus, thus providing little information about the broader range of problems that Canadians face, and their consequent justice responses. Clearly, then, there is a dearth of information about problems and pre-legal activities in Canada.

## II. AN EMPIRICAL MAP OF PROBLEM AND DISPUTE EXPERIENCE IN AN ONTARIO COMMUNITY

Keeping the paucity of data on the above aspects of Canadian legal culture in mind, I undertook a study of the incidence of problems, claiming behaviours, and disputing experience in a sample of randomly selected Ontario households. The study centered primarily on consumer problems with private business though some other matters were considered as well. The problems were limited to those involving fifteen hundred dollars or less.<sup>20</sup>

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<sup>17</sup> R.J. Moore, "Reflections of Canadians on the Law and the Legal System: Legal Research Institute Survey of Respondents in Montreal, Toronto and Winnipeg" in D. Gibson & J.K. Baldwin, eds, *Law in a Cynical Society? Opinion and Law in the 1980s* (Vancouver: Carswell, 1985) at 41.

<sup>18</sup> N. Vidmar & D.H. Flaherty, "Concern for Personal Privacy in an Electronic Age" (1985) 35:2 J. Com. 91.

<sup>19</sup> J. Samuels & N. Vidmar, "Consumer Complaints and Unfair Trade Practices: An Empirical Study of Ontario's Business Practices Act" (1987) W. Ont. L. Rev. 83.

<sup>20</sup> The reason for this financial limitation was that the study was originally conducted in conjunction with a study of dispute resolution in small claims courts and was intended to provide information on the base of disputes from which those cases arose. It should be noted, however, that the \$1500 limit captures a great number of the ordinary types of consumer problems with which members of Canadian households must deal. See, for example, Samuels & Vidmar, *ibid.* and Vidmar and Schuller, *infra*, note 25.

The data were intended to provide basic information bearing on a number of issues. What percentage of households experience consumer or related problems in a given year? What is the nature of these problems? Do people complain to someone about the problem? How often do the complaints result in some form of restitution, and how often are they denied? When complaints are denied, does the complaining party give up, seek some form of informal third party help, or seek legal remedies? What are the ultimate success rates? Are households from the lower socioeconomic strata less likely to complain or achieve success than households from the higher socioeconomic strata?

### A. Method

#### 1. Overview of research strategy

The research strategy was to obtain a random sample of households and interview the respondents in detail about perceived household consumer and other problems ("grievances") that occurred over the previous two and one-half year period.<sup>21</sup> Then, after problems were identified, the interviewer traced what occurred as a result of the grievance. If the respondent did not voice a "complaint" to someone, the interviewer inquired as to why. If, however, a complaint was registered, the interviewer inquired as to whether the other party rectified the situation or whether the complaint was rejected, that is, whether a "dispute" arose. Finally, if a dispute arose, the interviewer pursued its course, which could range from the respondent dropping the matter, to seeking informal third party help, or filing a lawsuit. Through this extensive inquiry, we can map the base of the dispute iceberg from the point of a perceived grievance, through claims and disputes, to litigation, the iceberg's tip.

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<sup>21</sup> The strategy was nearly identical to that of Miller & Sarat, *supra*, note 2. For a discussion of the strengths and weaknesses of this strategy see R.O. Lempert, "Grievances and Legitimacy: The Beginnings and End of Dispute Settlement" (1981) 15 Law & Soc'y Rev. 707; R.L. Kidder, "The End of the Road? Problems in the Analysis of Disputes" (1981) 15 Law & Soc'y Rev. 717.

## 2. Respondents

We selected 486 households in Middlesex County, Ontario, by means of two-stage cluster sampling technique. Middlesex County has a total population of 325,000 persons; the principal city is London, which has a population of 270,000. The county is similar demographically to much of English Canada.

Within each household, an adult was chosen to speak for that household. Despite our attempts to obtain an equal number of male and female respondents, the final sample consisted of 70 percent females and 30 percent males. However, subsequent analyses showed few sex differences in problem reporting. The interviews were conducted in the homes of the respondents between 15 April and 15 August 1982. The lengths of the interviews ranged between 25 and 102 minutes, with an average time of 47 minutes.

## 3. Interview format

The face-to-face interview consisted of five parts: (I) an inquiry into the scope of experienced problems, (II) a detailed exploration of one of these problems, (III) an assessment of general disputing experience, (IV) measures of social attitudes and personality dispositions, and (V) demographic information. For the present paper we will be concerned primarily with parts I, II, and V.

Parts I and II were similar to the interview formats used by the Wisconsin Civil Litigation Research Project in the United States and by Fitzgerald in Australia.<sup>22</sup> However, the questions were modified to deal specifically with household consumer and related problems involving fifteen hundred dollars or less. In part I, respondents were specifically asked whether they or a member of their household had experienced any of thirteen types of problems (see Table 1) during the past two and one-half years (that is, from 1980 to the date of the interview). The problem specification was very detailed. For example, under the category of problems with a tradesperson, such examples as plumbers, carpenters, electricians,

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<sup>22</sup> See Ladinsky, *supra*, note 11 and Fitzgerald, *supra*, note 13. A copy of the entire survey instrument is available from the author.

painters, mechanics, an appliance repair person (such as a stove, television, dishwasher, lawnmower, or snowblower), a furniture mover, carpet cleaner or furnace cleaner, and the hiring of a musician or catering service for a wedding celebration were listed. With respect to debts, we specifically mentioned employers, insurance companies, mortgage companies, banks, finance companies, and persons who made private loans. These lists, of course, were not inclusive of all potential problems but they usually caused respondents to mention other problems, which we subsequently coded.

In Part II we chose one of the problems mentioned by the respondent according to a random schedule. The problem was then explored in great detail. For example, we inquired about the amount and nature of the problem, whether a complaint was made and why not if the answer was in the negative, what happened in response to the complaint, whether a dispute arose and the nature of the dispute, whether the person sought third party help and the nature of that help, the final outcome of the complaint, the perceived nature of that help, the final outcome of the complaint, the perceived importance of the problem, and the respondent's feelings of satisfaction with the outcome. In addition to these systematic and structured questions, respondents were strongly encouraged to provide narrative accounts of their problem. These narrative data provide additional information on the justice seeking behaviours of our respondents. Part V assessed demographic characteristics of the household.

**Table 1**  
**Frequency of Reported Problems per Household**

1.	One or more automobile accidents		18%
2.	Suffered other property damage or injury		18%
3.	Accused of injuring person or property		5%
4.	Consumer purchase problem		44%
	Only 1 problem reported	11%	
	2 problems reported	16%	
	3 or more problems reported	7%	
5.	Private sale or purchase of item		6%
6.	Service problems: Tradesmen		62%
A.	Home (e.g., plumber, carpenter, electrician)		16%
	Quality	80%	
	Price	12%	
	Quality and price	8%	
B.	Automobile Repair		20%
	Quality	69%	
	Price	22%	
	Quality and price	9%	
C.	Appliance Servicing		13%
	Quality	76%	
	Price	17%	
	Quality and price	6%	
D.	Other (e.g., mover, carpet or furnace cleaner, caterer)		13%
	Quality	82%	
	Price	8%	
	Quality and price	10%	
7.	Professional Services		40%
A.	Doctor		12%
	Quality	91%	
	Price	9%	
	Quality and price	0%	
B.	Lawyer		6%
	Quality	54%	
	Price	38%	
	Quality and price	8%	
C.	Dentist		8%
	Quality	34%	
	Price	47%	
	Quality and price	18%	
D.	Veterinarian		4%
	Quality	53%	
	Price	35%	
	Quality and price	12%	
E.	Accountant		1%
	Quality	40%	
	Price	40%	
	Quality and price	20%	

....continued

Table 1 continued

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F.	Chiropractor		1%
	Quality	50%	
	Price	50%	
	Quality and price	0%	
G.	Optometrist		4%
	Quality	71%	
	Price	18%	
	Quality and price	12%	
H.	Other		4%
	Quality	83%	
	Price	17%	
	Quality and price	0%	
8.	Problems collecting money or refunds		34%
A.	Employer	5%	
B.	Insurance company	5%	
C.	Bank	2%	
D.	Department store	3%	
E.	Utility company	2%	
F.	Person to whom money was loaned	4%	
G.	Person to whom items or property loaned	1%	
H.	Other	12%	
9.	Problems involving a debt		27%
A.	Employer	0%	
B.	Insurance company	1%	
C.	Mortgage company	1%	
D.	Bank	2%	
E.	Finance company	1%	
F.	Credit card company	4%	
G.	Department store	2%	
H.	Utility company	8%	
I.	Private person who loaned money	0%	
J.	Private person who loaned items or property	1%	
K.	Other	7%	
10.	Problems with real estate		9%
A.	Home or property purchase	1%	
B.	Sale of house or property	1%	
C.	Use of own or someone else's property	0%	
D.	Use of jointly owned property or possessions	0%	
E.	Boundary or fence dispute	5%	
F.	Other problem	2%	
11.	Problems as tenant of room, apartment or house (36% of sample rented during this period)		51%
A.	Rent	14%	
B.	Eviction	3%	
C.	Condition of property	23%	
D.	Sublease	2%	
E.	Other	9%	
12.	Problems as landlord of room, apartment or house (13% of sample were landlords during period)		84%
A.	Rent	28%	
B.	Eviction	15%	

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Table 1 continued

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13. Other household problems mentioned voluntarily by respondent	12%
A. Police	4%
B. Government agency	31%
C. Business	53%
D. Neighbor or relative	13%
14. Problems before 1980: volunteered by respondent	49%
A. Automobile accident	18%
B. Damage to self or property	6%
C. Damage to others	0%
D. Consumer purchase	18%
E. Private sale or purchase	7%
F. Tradesman service	16%
G. Professional service	3%
H. Collecting money or refunds	8%
I. Owing money	7%
J. Real estate transaction	5%
K. Rent (as tenant)	6%
L. Rent (as landlord)	2%
M. Other	4%
15. Problems of this type accruing from respondent or household members' occupation	14%
Number of problems per year:	
Mean:	66
Median:	10

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## B. Results

### 1. The baseline: perception of problems

Table 1 describes the numbers and types of problems that households were reported to have experienced in the two and one-half years preceding the interview.

An overview of the findings reported in the table is as follows: the average household experienced a number of problems, particularly with respect to the services of tradespersons and professionals and with purchases of products; significant numbers of problems were also experienced in other areas.

Turning to the specifics, eighteen percent of households experienced one or more automobile accidents involving less than fifteen hundred dollars. Some of the property damage reported in

questions 2 and 3 also involved automobiles, particularly damage to a car in a parking lot. Respondents tended not to consider such events as an automobile accident, perhaps because they did not involve police being called to the scene, they occurred on private property, or the parties usually settled the damage claims themselves rather than involve their insurance agencies.

Product problems, which involved the buying of an item or tangible object as opposed to a service, were experienced by 44 percent of households with 16 percent of this number experiencing two or more problems, and 7 percent experiencing three or more problems. Sixty-two percent of households had a problem with a tradesperson. That figure is further disaggregated in Table 1 by the type of service: home repair, automobile repair, appliance servicing, and other. We also asked whether the problem involved the quality of the service, the price, or both. The data show that in the overwhelming majority of cases, the problem involved quality of service rather than price.

Forty percent of households had a problem involving professional services. Price was of substantially more importance in professional as opposed to tradesperson services. Perhaps this was because professional services are less tangible than tradesperson services, or perhaps professionals are often regarded as simply charging too much.

Variables 8 and 9 of Table 1 show that 34 percent of the households had a problem collecting money or refunds, and 27 percent had a problem involving a debt. Nine percent of the households had a problem involving real estate, as shown by Variable 10. The disaggregation shows that most of these problems involved a boundary dispute or some form of trespass.

Variable 11 indicates the number of problems arising as a function of being a tenant rather than a private home owner. As noted in the table, 36 percent of the total sample rented a room, apartment, or house during the period in question. Of these 36 percent, just over one-half, that is 51 percent had some sort of problem. The disaggregation shows that almost one in four tenants (23 percent) was dissatisfied with the physical condition of the property. Another 14 percent had a problem involving the amount or conditions of payment. Another 9 percent reported "other" problems; most of these "other" problems involved fellow tenants, for



example, playing the stereo too loud. Variable 12 shows that 13 percent of households had been landlords at some time during the period. It should be noted that our classification of respondents as landlords did not involve those for whom it was a full-time occupation, but rather something part-time, such as renting a room or owning a small apartment building as an investment. These data show, perhaps not surprisingly, that such investments are not without their headaches. A full 84 percent of the households engaged as landlords had problems, most of these accruing from claims that rent was owed, that tenants had damaged the property, or that tenants had to be evicted.

At the end of the list of problems presented to the respondent, he or she was asked if there had been any other problems that we had overlooked in the set of questions. Twelve percent of the sample mentioned other problems, as shown by Variable 13, and most of these involved some business or a government agency.

In summary, Table 1 indicates that a substantial number of household problems were uncovered by the survey. The largest number of problems involve the services of tradesperson, with 62 percent of households reporting a problem of this sort between January 1980 and the middle of 1982. Dividing that figure by 2.5, the number of years covered in the interview, yields a finding that in any given year, one in four households (24.8 percent) had a problem related to tradesperson services. The next most mentioned problem area involved product purchases. Again dividing by 2.5, the data yielded the conclusion that 17.6 percent of households perceive at least one significant item purchase problem every year. This was closely followed by problems involving the services of a professional, with 16 percent of households per year reporting a problem. Similarly, each year, more than one household in ten (actually 13.6 percent) had a problem collecting money or refunds, and slightly more than one in ten households (10.8 percent) had a problem involving a debt. For those persons who were tenants, approximately one in five (20.4 percent) reported a problem, and for those persons who were part-time landlords, slightly more than one in three (33.6 percent) had a problem with tenants each year. The potential base from which legal disputes could arise was substantial in Middlesex County.

**Table 2**  
**Reported Problems per Household**

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1. Total number of all problems		4. Total professional service problems	
0	19%	0	74%
1	18%	1	19%
2	16%	2	6%
3	9%	3	<u>1%</u>
4	10%		100%
5	6%		
6	6%		
7	6%		
8	2%		
9	3%		
10	2%		
11	1%		
12	1%		
13	<u>1%</u>		
	100%		
2. Total number of product purchase problems		5. Total debt collecting problems	
0	61%	0	72%
1	23%	1	22%
2	11%	2	5%
3	2%	3	<u>1%</u>
4	2%		100%
5	<u>1%</u>		
	100%		
3. Total number of reported tradesman service problems		6. Total debt paying problems	
0	58%	0	78%
1	29%	1	17%
2	10%	2	4%
3	2%	3	<u>1%</u>
4	1%		100%
5	<u>0%</u>		
	100%		

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Another way to look at the data is to ask how the problems were distributed over households. Recall that there were thirteen major problem areas covered in the survey. Respondents could — and often did — report more than one problem for each of these areas.

Variable 1 in Table 2 reports the distribution of total problems by household. It shows that 19 percent of the households in our sample reported no problems at all, 18 percent reported only one, 16 percent reported two, and so forth. Although almost three out of four (72 percent) households reported four or fewer problems, some reported substantially more. The average number of reported problems was 3.28. Dividing this figure by the 2.5 year period covered in the survey, we can conclude that on average our sample of households experienced 1.3 problems per year. The remainder of Table 2 reports the same kinds of data disaggregated into the most common types of problems.

Table 2 shows that there are differences in frequency of problem reporting among households. It is important to consider whether the frequency of reporting varies by the demographic characteristics of the household. Accordingly, the reporting of total number of problems and the disaggregation of problems by type (as portrayed in Table 2) were compared against the estimate of yearly household income, and the head of the household's occupation, education, and age. Degree of education, occupation, and income were positively related to problem reporting. Moreover, the pattern remained approximately the same regardless of whether the variable compared was total number of problems, or the disaggregated types of problems. Table 3, therefore, compares household income with total number of problems reported; it is generally representative of the other demographic relationships.

As may be seen, there is a positive relationship between income and the tendency to report problems: the higher the income, the greater the tendency to report problems.<sup>23</sup> Age was

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<sup>23</sup> We used a number of statistical tests, primarily the Chi-square test, to assess the statistical significance of comparisons that are discussed in the rest of this article. These tests are measures of statistical association commonly used in social science research. It tells whether the association between two variables is a reliable one or due to chance. To be considered reliable a probability level of at least .05 must be reached, that is, the likelihood

also significantly related to the reporting of problems, but it was an inverse relationship: older people reported fewer problems.

Table 3

**Total Number of Reported Problems Disaggregated by Income\***

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Household Income Level	Number Reporting Problems
less than \$10,000	64%
\$10,000 - \$20,000	79%
\$20,000 - \$30,000	82%
\$30,000 - \$40,000	84%
\$40,000 - \$50,000	96%
\$50,000 - \$60,000	100%
\$60,000 - \$70,000	100%
Over \$70,000	100%

\* Sample Size = 428

The survey methodology of the study does not allow us to ascertain the causal factors in these relationships. People who are poorer and who are older may simply have fewer problems; perhaps they purchase less or purchase more wisely. Alternatively, they may have different thresholds for reporting problems. Possibly the explanation may lie in a combination of these two factors or some third factor.

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that the association occurred by chance is equal to or less than one in twenty. The reader may consult S. Siegel, *Non-parametric Statistics For the Behavioral Sciences* (New York: McGraw-Hill, 1956) for further discussion of these tests. In the remainder of this article we do not report the results of the tests but all of the comparisons that are discussed meet the criterion of statistical significance. A table of the test results can be obtained from the author.

## 2. Complaints, disputes, and outcomes

Knowing something about the incidence of household problems, we next need information on what was done about these problems. Were these problems or grievances borne in silence, or was a complaint made? Was the complaint rejected, thereby becoming a dispute? Are complaining and disputing related to the type of problem involved? Did the parties resolve the dispute themselves or did they seek third-party help? How was the dispute eventually resolved? How did the complainant feel about the outcome?

As reported above, the survey produced two forms of data bearing on these questions: narrative data and quantitative data. The quantitative data are the most useful in the sense that they provide a structured, systematic approach to the course of problem solving. The narrative data, however, provide us with important qualitative information. The quantitative data reported in Table 4 are tabulated over all cases and are also disaggregated by problem type.

### a) *The value of complaints*

The first matter to consider is the value of the complaint. Respondents were asked to place a monetary value on the problem, but many times they could not, or would not characterize it in such terms. For example, how does one quantify a problem involving improperly fitting false teeth, a lawyer or accountant misplacing the client's file, or a problem involving a neighbour's incessantly barking dog?

Variable A, in Table 4, reports the percentage of cases where the respondent was able to estimate the problem in financial terms. The difference between problem types were statistically significant. The "other" category problems were least likely to be assessed in monetary values (only 12 percent), followed by professional service (28 percent), and tenant (53 percent) problems. For the non-monetary problems, for example, the remedy most likely involved compliance to some norm of behaviour (silence or sell the barking dog), or improved product or service (for example, make the teeth fit better or find the files).





Variable B reports the means and medians of the monetary estimates for those problems that could be characterized in financial terms. The amounts differed statistically across problem types. Private sales, real estate transactions, and automobile accidents involved the greatest amounts, and "other" problems the least amount; the overall average of problems was \$366 and the median was \$180.

There is another way to view the value of the problem, and that is through subjective feelings about its importance. Respondents were asked to characterize the problem in terms of a four-point scale ranging from not important to very important. These data are reported under Variable C in the table. For all problem types, a majority of respondents characterized the problem as very or quite important. On the whole, perceived importance did not vary by problem type, though it is worthwhile to observe that professional service problems received the highest importance rating: fully 64 percent of persons said these were very important, and another 28 percent said quite important.

Perceived importance was related to whether the problem was monetary or non-monetary. Non-monetary problems were seen as more important. This is explained, at least in part, by the professional service problems, which were all rated high in importance, but relatively few of which were characterized in monetary terms. When we consider only those problems involving clear monetary values, we find, not surprisingly, that the larger amount involved, the more important the problem was rated. We will return to the matter of perceived importance in some of the analyses that follow.

#### b) *Registering complaints*

Do people do anything about their problems, or does the problem remain as an unregistered grievance? Variable D reports the percentage of persons who complained. As can be seen from these data, the complaining rate was 70 percent over all problems, but it differed substantially as a function of problem type. One hundred percent of persons who had a problem with a debt that was owed made a claim, followed by product (86 percent) and money



collection (86 percent) problems. However, only 43 percent of respondents reported that they complain about professional service problems. Torts, other than automobile accidents and tenant problems, also had relatively low complaint rates, 48 percent and 50 percent respectively. Problems involving the services of a tradesperson were also less likely to evoke complaints (57 percent) than other types of problems.

c) *Failing to complain*

It is important to ask why people failed to complain when they believed that they had a legitimate grievance. Interestingly, there was no relationship between the likelihood of lodging a complaint and the perceived importance of the problem or the amount of money involved. Respondents were also asked to indicate in narrative why they did not complain, and then they were presented with a list of possible explanations, any of all of which might be endorsed: for example, "didn't think it would do any good," "takes too much time," "didn't know who to complain to," "partly my fault." Responses to the list of reasons varied, with no single cause differentiating between problem types. The narrative data, however, provides us with some insights. The failure to complain in the non-automobile tort cases can be explained partly by the fact that almost one-half of them involved damage caused by neighbours, or their pets. People were reluctant to complain because of the potential for disrupting an ongoing relationship. Problems experienced by tenants often involved vaguely defined complaints of a non-monetary nature: the respondent was unhappy with services such as garbage removal or heating, but was unsure whether there was a right to complain or if it would do any good. With respect to the services of a tradesperson, most respondents who did not make a complaint found it easier to seek the services of a different tradesperson, that is, engage in what Hirshman labelled "exit" from the relationship.<sup>24</sup>

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<sup>24</sup> A.O. Hirschman, *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States* (Cambridge, Mass.: Harvard University Press, 1970).

The failure to complain about professional service problems involved three main, but partially interrelated, reasons. The first was the relative ease of taking one's business to another professional. The second reason involved a belief that complaining would do no good. The professional was viewed as an authority, as one whose services were not tangible and therefore open to alternative judgments about quality; in short, the professional had the resources to out-argue the complaint. Because respondents perceived that there was a low probability of success in validating the claim, it was decided that complaining was not worth the effort. In fact, several of our respondents who sought legal advice over a perceived professional problem were encouraged to drop the matter for precisely this reason. Others, who did not seek legal advice, arrived at the conclusion on their own. The third reason was more complex and subtle. Recall that these are only problems as perceived by the complainant; we have no evidence bearing on the actual validity of the claim. There is the possibility that because professionals are professionals — and charge high prices — people expect more from them than they do from other business relationships. That is, the expectations are greater, and consequently the subjective threshold for perceiving problems is lower. At the same time, the problem is more ephemeral and difficult to articulate. Any or all of these three reasons seemed to be present in many of the professional problems described to us and apparently accounted for the low rate of complaints.

As reported earlier, there were some relationships between demographic characteristics and reports of problems (see Table 3). Therefore, these demographic characteristics were compared to the rates of complaints. Household income was not related to complaining. Lower income households reported fewer problems, but their occupants were as likely to complain as upper income households when they did perceive a problem. The education of the head of the household was related to complaining: those with higher education were more likely to complain. Finally, the older persons were less likely to make a complaint about a perceived problem.

Finally, we gathered some evidence that suggests that there may be personality differences between people who complain and those who do not. Toward the end of our interview, the respondent

was asked to complete a brief personality scale intended to measure the propensity to complain and dispute.<sup>25</sup> The data show that persons who failed to complain when they perceived a problem scored lower on the measure of claim propensity. This relationship was not a large one, but it does suggest that people exhibit consistent individual differences in their proclivity to complain. Unwillingness to complain, therefore, is a function of complex factors.

d) *The form of the complaint and the target*

The form of the remedy requested in the complaint was categorized as something requiring "additional service," a "replacement," or "money." These data are reported as Variable E in Table 4. Since Variable A showed us that not all problems were equally likely to be assessed in monetary terms, it is not too surprising to find that there were differences in what was requested. Persons with automobile accident problems almost always requested money, whereas persons with a professional service problem almost never did. Problems with a tradesperson seldom involved a monetary request. It is also interesting to note that while product problems could almost always be translated into dollar values, in only about one case in five did the complaint involve money. Consumers apparently just wanted the product to work properly; they therefore requested service or replacement.

Variable F describes disputing strategy. People with a complaint may voice it to the person directly responsible or may go over their head and voice it to a superior, if one exists. Alternatively, they may immediately seek third party help. For automobile accidents, people sought third party help 50 percent of the time; generally the third party was an insurance agent though some households contacted their lawyer. A similar pattern of behaviour was exhibited with other torts. However, with these two exceptions, the conclusion from Variable F is that when people did

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<sup>25</sup> For a complete discussion of this scale and additional associations with it, see N. Vidmar & R.A. Schuller, "Individual Differences and the Pursuit of Legal Rights: A Preliminary Inquiry" (1987) 11 L. & Human Behaviour 299.

complain, it was usually first expressed directly to the person responsible.

e) *Disputes*

When complaints are made, how often do disputes arise? Miller and Sarat<sup>26</sup> have reminded us that disputes can take different forms: the subject of the complaint can reject it outright or offer less than the complainant is requesting, the subject may tender a counter complaint, there can be a delay in reaching agreement, or a problem can arise after an agreement is tentatively reached. Any or all of these forms may occur in response to a complaint, and it is important to assess each possibility.

Variables G through K report the incidence of disputes as a function of each of these criteria. Variable G shows that in about one case in three, a counter-complaint was made in automobile, debt, and tenant problems, but this was not very likely with other problems. Variable H shows there were substantial differences among problem types regarding what was asked and what was received. Large percentages of complainants with tort, private sale, real estate, and tenant problems received less than they requested. Variable I shows similar results. Delays in obtaining agreement also varied across problems (Variable J), with automobile, torts, private sales, professional service, and money problems being the most likely to result in delay. Product problems yielded the lowest disagreement rate. Delays in reaching agreement seem endemic to almost all types of problems. Finally, Variable K shows that once an agreement is reached, in about one case in five there is a problem in carrying it out, with tenant problems being those most likely to experience difficulty.

f) *Seeking help*

Although Variable F reported instances where the complainant sought third party help as a first step in voicing the complaint, we were also interested in the total number of instances

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<sup>26</sup> See Miller & Sarat, *supra*, note 2.

where the help of third parties was sought after the complaint was made. We distinguished between professional legal help and other forms of third party help. The data from these analyses are reported as Variables L, M, and N. Variable L simply reports whether the complainant made contact with a third party. It can be seen that overall, only 39 percent of people with a complaint (slightly less than two in five) sought third party help of any type. Although the interviewer actually asked the respondents to name all third parties, we discovered that in the vast majority of cases, only one third party was contacted.

Variable M reports the percentage of other third party forums that were contacted by people with problems. Disaggregating these data further yielded the following findings: 3 percent contacted the Better Business Bureau, 3 percent contacted the Ministry of Consumer and Commercial Relations, 2 percent contacted a newspaper action line, 3 percent went to the police, 4 percent went to a small claims court, 3 percent contacted an elected official, and 9 percent reported contacting some "other" outlet such as a rent review board.

We also sought to determine the extent to which people sought legal advice or help if they had a complaint. These data are reported as Variable N. Considering all problems, lawyers were consulted in 13 percent of cases or about one case in seven or eight. For tenant and automobile accident problems, the figures are one in four, but for product problems the figure is one in one hundred. We also compared the estimated monetary value of the dispute (for those cases that could be estimated in financial terms) and found that the more money that was involved, the more the person was likely to consult a lawyer.<sup>27</sup>

These last data give us some important insights about one aspect of the role of lawyers in Canadian society. We can work out a rough estimate of the use of lawyers' services with respect to these "minor" problems from these data and others already reported in this paper. Table 2 showed us that 81 percent of households had one or more problems during a two and a half year period. Variable D

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<sup>27</sup> Some households, of course, will contact lawyers more than once during a year; our data only tell us about the number of households making contact, not frequency of contact.

of Table 4 tells us that 70 percent of the time the person complained. Variable N tells us that when people complained, lawyers were consulted 13 percent of the time. Multiplying these percentages together (that is, 81 percent times 70 percent times 13 percent), we arrive at the conclusion that the services of lawyers were used by 7.4 percent of households. Dividing this number by the two and one-half years covered in the interview leads us to the conclusion that each year, about 3 percent of households contact a lawyer about a "minor" legal problems of the sort covered in our survey.

The above estimate fails to take into consideration the fact that some households had more than one complaint. Moreover, it does not take into consideration the likely possibility that some households never contacted a lawyer about their problems while others did so frequently. Unfortunately, our survey did not systematically assess the frequency of lawyer consultations in cases where the person had a grievance but did not voice it to the person perceived to be responsible. We only know that in some of these latter cases, legal consultations did take place from the anecdotes relayed to us in the narrative responses, and that often the lawyer advised the person not to take further action. Thus, the figure of 3 percent is likely an underestimate of household use of lawyers for minor problems.

It is important to note that the legal consultation by the person with a problem may be only a few words of advice over the telephone or a ten minute meeting in the lawyer's office, nevertheless, it is advice. The advice may be that the dispute is not worth pursuing, or that the person should pursue it on their own. Encouragement of such self help, such as seeking a remedy in the small claims court, is often accompanied by additional information on how to proceed. Our data showed that when lawyers were consulted, 61 percent of the time they offered only advice. In the remaining 29 percent of cases, the lawyer's action usually involved a phone call to the other party's lawyer or the writing of a brief letter to the other party, either explicitly or implicitly posing the threat of legal action. Lawyers charged for their services 32 percent of the time that contacts were made, predominantly, though not exclusively, in cases where they took some explicit action on behalf of their client.

For most of the problems that we studied, if legal action were initiated, the appropriate legal forum would be the small claims court. The survey inquired as to whether small claims action was initiated, and what its result was. (The survey also asked about other court actions, but none was uncovered.) We discovered that the initiation of small claims action was very infrequent when disputes developed. In the total sample, only seven cases involved a court filing. Five of these involved tenant problems. Moreover, only two of the cases, both of them involving tenant problems, were adjudicated; the rest were settled. We know from another study that the Middlesex County Small Claims Court handles over five thousand claims per year, about three-fourths of them involving individual versus individual and individual versus business (as opposed to business versus business disputes).<sup>28</sup> The present data, thus, suggest that small claims cases are drawn from a very broad base of potential cases and are the exception rather than the rule.<sup>29</sup> The citizens of Middlesex County do not typically go to court with their minor problems.

g) *Outcome of complaints*

Does it do any good to complain about a problem? Data bearing on this question are reported in Table 4 as Variables O, P, Q, and R. Recall that some problems did not involve monetary values (see Variable A). Consequently, for these problems, the solution was compliance, which we coded as full, partial, or no compliance. Variable O indicates that success rates varied as a function of problem type. Success rates were, relatively speaking, low for problems involving private sales, professional services, and debts. They were high for tort, products, tradesperson services, real estate, tenant, and "other" problems.

Variables P and Q report, respectively, the mean and median dollar amounts, and the mean percent of restitution (in relation to

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<sup>28</sup> See N. Vidmar, "The Small Claims Court: A Reconceptualization of Disputes and an Empirical Investigation" (1984) 18 L. & Soc'y Rev. 515.

<sup>29</sup> Other respondents made inquiries about the small claims court but decided against court action.

claim) for those problems that could be assessed in monetary terms. Restitution rates varied significantly by problem type.

Perhaps the best way to assess outcomes, however, is to combine monetary and non-monetary complaints into an index with common terms. Variable R reports such an index. Outcomes were classified according to whether the complainant ultimately received nothing, or whether the outcome resulted in some improvement of circumstances or service. Looking at these data, we see that automobile accident and product problems overwhelmingly resulted in some ultimate benefit for the complainant. In contrast, half of complainants with real estate, private sale, and professional service problems received nothing.

The reader should once again be cautioned that these data do not speak to the actual validity of the problems that were voiced in the interviews. Conceivably, some subjects of complaints ultimately made concessions to end the dispute. Nevertheless, the data showed that across all problems, complaining resulted in partial success 72 percent of the time and failed 28 percent of the time, roughly three times out of four.

#### *h) Satisfaction*

Success should not be judged by concrete criteria alone. An important measure of outcome is how people feel about the outcome. For example, a person who eventually received everything sought may still be dissatisfied because the process of obtaining it was so difficult or, conversely, someone who received nothing may still feel a sense of satisfaction. We assessed satisfaction by asking respondents to indicate their feelings on a five-point scale ranging from Very Satisfied to Very Dissatisfied. Not surprisingly, perhaps, people who complained were more satisfied than those who did not complain, and those whose complaint led to a dispute, were less satisfied than those whose did not. Those persons who received some form of restitution or compliance were more satisfied than those who did not. Persons who judged the problem as more important were less likely to be satisfied.

Finally, satisfaction varied as a function of type of problem. The mean levels of satisfaction, only for those persons who complained, are reported as Variable S in Table 4. Approximately



three persons out of four with automobile accident problems and item product problems reported that they were either very, or somewhat satisfied. However, persons with professional service, tradesperson service, or debt problems were especially likely to feel dissatisfied. These results should not be especially surprising in the light of data from Table 4 that have already been discussed. The former problems seem especially likely to lead to success and the latter to non-success, at least in relative terms.

i) *Correlates of successful complaining*

Earlier, it was reported that households with lower incomes were less likely to report problems but were not less likely to complain when problems arose. We also found some correlates of education and age with respect to complaining. However, analyses of demographic variables with aspects of the disputing process, outcomes, and satisfaction yielded no statistically significant relationships. Success was not related to the number of problems reported either. Thus, our conclusion is that respondents with lower incomes were as likely to have success when they complained as those with higher incomes.

We also attempted to determine if contacting a third party, such as the Better Business Bureau or a lawyer, had effects on success rates. A series of analyses showed no relationship between these variables and success. Perhaps this should not surprise us. Lawyers, for example, cannot work miracles with a bad case and perhaps some respondents with bad cases contacted lawyers. Indeed, the study of the Middlesex County Small Claims Court found that the presence or absence of lawyers did not affect case outcomes for either cases that were settled or adjudicated, even under circumstances where one party had a lawyer and the other did not.<sup>30</sup>

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<sup>30</sup> See N. Vidmar, "An Assessment of Mediation in a Small Claims Court" (1985) 41:2 J. Soc. Issues 127 for discussion of this point.

*C. Supplementary Research Data*

In a subsequent study that was intended for another purpose, Regina Schuller and I<sup>31</sup> collected data that speak to the reliability of the above results and extend the map into some new domains. The study and some of its findings should be summarized for this article.

During June through August of 1986, another survey was conducted with 202 respondents from randomly selected households in London, Ontario. The first part of the interview was similar to the 1982 survey, except that no financial or other limit was placed upon the problems that were asked about, and respondents were requested to describe only problems that had occurred in the preceding twelve months. In addition, we asked about problems involving some other areas. With respect to federal and provincial agencies, we asked about Canada Pension, disability allowances, workers' compensation, welfare and social services, veterans affairs, Canada post, and immigration. We also inquired about problems with municipal government agencies involving such things as tax assessment, zoning changes, the Board of Education, local by-laws, road and sewer problems, and garbage collection. The follow-up inquiries about problems was less extensive than in the earlier research, but we did ascertain whether the problem involved a monetary issue, the amount if it was a monetary issues, whether a complaint was made, and if a complaint was made, whether the complainant receiving nothing, some, most, or all of what was requested, or whether the problem was still ongoing, that is, had not been resolved. A summary of these data is presented in Table 5.

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<sup>31</sup> See Vidmar, *supra*, note 28.

Table 5  
Problems, Complaints, and Outcomes: Supplementary Study, 1986

Problem Category	Percent of Respondents Reporting	Monetary Issue	Median Amount of Money	Complaint Registered	If Complaint: Final Outcome			
					Nothing	Some	Most	Ongoing
Auto Damage	17%	76%	\$ 900	68%	5%	5%	5%	18%
Property Damage	14%	52%	\$ 150	55%	6%	6%	6%	13%
Product Purchase	41%	78%	\$ 37	67%	13%	1%	2%	8%
Private Sale	5%	100%	\$ 250	70%	29%	14%	14%	0%
Tradesman Service	30%	62%	\$ 300	84%	21%	3%	9%	21%
Professional Service	21%	22%	\$ 350	39%	36%	14%	0%	14%
Debt Owed by Respondent	13%	81%	\$ 450	89%	40%	4%	4%	17%
Debt Owed to Respondent	15%	60%	\$ 139	80%	13%	0%	9%	35%
Real Estate	14%	38%	\$3000	90%	19%	15%	12%	27%
Federal and Provincial Government	18%	14%	\$ 150	57%	19%	14%	0%	29%
Municipal Government	20%	23%	\$ 300	72%	31%	0%	0%	41%

It is important to caution the reader that these data are not directly comparable to those in Table 4, due to the unrestricted financial limits and the smaller and more urban sample of respondents. Nevertheless, it is quite apparent that the basic patterns reported in Table 5 are similar to those obtained in the first study. For example, the frequency of problems remains about the same across categories; problems with professional services. From these data we can estimate that each year, one in five households had a problem with a municipal government, and about one in five had a problem exhibited moderate rates of complaining to these agencies, the data suggest that the success rates of complaints was not particularly good.

#### *D. Some Constraints of the Data*

Before turning to the implications of these findings, it is important to draw attention to some limitations of the research. It must be kept in mind that the consumer problems under investigation for the main study reported here were restricted to fifteen hundred dollars or less. Thus, they do not give the full picture of all the problems that households may experience. Although the supplementary data did not have financial limits, the sample size was too small. Since major problems can be expected to be relatively infrequent, it is necessary to have sample sizes consisting of several thousand respondents or more to obtain accurate estimates.

Another limitation arises from the fact that self reports are subject to memory lapses that may result in the underreporting of problems or idiosyncratic recall resulting in selective reporting. We cannot, therefore, rule out the possibility that the survey has yielded a conservative or biased map of problem encounters. On the other hand, the details covered in the interview, the high rates of problem reporting, and the high involvement by respondents during the interview suggest that this is a minor limitation.

The survey data, moreover, begin only at the point of a perceived problem. Some respondents may have had a legitimate

legal claim but did not recognize it.<sup>32</sup> In short, different respondents may have different grievance thresholds. Indeed, different thresholds could explain the fact that households with lower incomes reported fewer problems, though we must also note again that when problems were perceived, there were no differences in complaining rates or in outcome and satisfaction rates. An alternative to the threshold hypothesis is the hypothesis that households with lower incomes made fewer purchases. Previous researchers have attempted to overcome this problem of interpretation by asking respondents to indicate how many purchases of various types they had actually made and then compare purchases to complaining rates.<sup>33</sup> The difficulty with this approach is that such data cannot easily estimate the extent to which the quality of purchases, whether products or services, varies by income level.

On the other hand, the perception of grievances does not mean that the perceptions were legitimate when held against some external standard. This fact, of course, has major implications not only for the extent to which people perceive complaints, but also rates of complaining and, particularly, success in obtaining satisfactory outcomes.

Notwithstanding limitations and constraints on interpretation, the data still allow us to make some reasonable estimates about the scope of the problems under investigation.

### III. SUMMARY AND IMPLICATIONS

This study provides a number of insights about a range of consumer problems experienced by Canadian households. In any given year, about one in four households experienced a problem resulting from hiring a tradesperson, about one in six experienced a problem with a purchase such as an appliance, about one in six had a problem with someone who provided professional services, about

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<sup>32</sup> See Lempert, *supra*, note 21, Kidder, *supra*, note 21 and Boyum, *supra*, note 4.

<sup>33</sup> See A. Best & A.R. Andreasen, "Consumer Response to Unsatisfactory Purchases: A Survey of Perceiving Defects, Voicing Complaints, and Obtaining Redress" (1977) 11 L. & Soc'y Rev. 701.

one in seven had a problem collecting money or refunds, and slightly less than one in ten experienced a problem relating to a debt. Among persons who rented their residence, about one in five reported a problem with their tenancy. Considering households as consumers of government services, we found that about one in five had a problem with municipal government and about one in five had a problem with a federal or provincial agency. Households with occupants who were younger, had higher incomes, more education, and higher status occupations were more likely to report problems than those not having these characteristics. Almost one in five households reported no problems of the sort that we investigated.

Our investigation of what subsequently resulted from these perceived problems showed that Canadians did tend to complain rather than passively accept the situation. On average, people complained 70 percent of the time. However, there was considerable variation across types of problems, ranging from complaint rates of 86 percent, 86 percent, and 84 percent respectively for problems involving the collection of money, debts, and item purchases, to rates of only 47 percent for professional problems, and 48 percent for non-automobile torts. Rates of disputes arising from these complaints also differed by problem type. Product purchases yielded the lowest rate of disputes.

Outcomes were assessed by several measures of restitution and by the complainant's feelings of satisfaction. We found that over all problems, three times out of four, the complainant received some form of remedy or restitution, though often it was only part of what we asked; and 55 percent of complainants reported that they were very, or somewhat satisfied with the outcome. However, outcomes differed substantially, depending on the type of problem. Complaints with respect to product purchases and automobile accidents yielded high rates of restitution and satisfaction; complaints involving professional services, tradesperson services, debts, and tenancy yielded low rates of restitution and satisfaction.

The data showed that although there were demographic correlates involved in reporting of problems, such relationships were much weaker or non-existent when it came to complaint behaviour, disputes, and outcomes. The data did hint that lawyers may play a modest role in advising households about how to handle minor problems; however, they tend to avoid active intervention,

particularly resort to formal law. Canadians predominantly preferred to handle their own minor problems without the intervention or active help of third parties of any kind. In this sense, they exhibited patterns of behaviour and attitudes that were similar to those that Ladinsky and Susmilch found in their study of consumers in Milwaukee, Wisconsin.<sup>34</sup> These findings have important implications for policy decisions about the development of alternative dispute resolution forums in contemporary society: such forums will probably have low rates of utilization.

One issue for discussion concerns the meaning of our findings regarding the complaining rates and problem-solving capacity of Canadian households. On the one hand, we have concluded that on average, people are not hesitant to complain about a perceived problem, and that ultimately most complainants receive at least partial restitution or compliance. However, viewed in another way, the problem solving capacities are not so great. Table 4 indicates that 30 percent of households did not register a complaint to a perceived grievance (Variable D). Of the 70 percent who did complain, 28 percent received nothing for their effort (Variable R). This latter figure accounts for 20 percent of the total sample. Combining it with the 30 percent of households that did not complain leads us to the conclusion that fifty percent of perceived problems were never remedied. However, it should be emphasized again that we are dealing with *perceived* grievances and have no way of assessing the merits of these grievances by some external criterion.

Another interesting point arises out of our findings about differences between types of problems. For example, contrast problems arising from the purchases of products like appliances or automobile accidents and problems arising from professional services. The former have among the highest complaint rates, the lowest dispute rates, and the highest outcome success rates. The latter fall on the other ends of the spectra. The findings about product purchases are probably not difficult to explain. They are usually tangible, demonstratable problems. Automobile damage is usually

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<sup>34</sup> J. Ladinsky & C. Susmilch, *Community Factors in the Brokerage of Consumer Product and Service Problems* (Madison, Wisc.: Dispute Processing Research Program, University of Wisconsin, Madison Law School, 1983).

covered by insurance and purchases that go awry can usually be easily serviced under warranty, sent back to the manufacturer, or replaced. The contentious matter is the interpretation of the data about professional problems. As discussed previously, the results can be interpreted in two ways. One is that when the utilization of a professional results in a problem, clients are hesitant to complain because of who the professionals are and what they do is intimidating. Furthermore, if complaints are made, success rates are low due to these same factors. An alternative interpretation is that people expect more from professionals and, therefore, the threshold for dissatisfaction is lower than for other problems; by some external standard, the grievance is not valid. People intuitively sense this is so and thus do not complain, or if they do complain, they are overwhelmed by the professional's defense of his or her competence. The first interpretation suggests a serious consumer issue about professional services whereas the latter suggests that there is no basic justice problem. The issue, therefore, needs further investigation. One strategy would involve in-depth case analysis. For example, another sample of persons with professional problems could be identified, and detailed interviews could then be conducted with the professional and with other persons familiar with the general professional and legal aspects of the matter. In this way, an estimate of the validity of the problem could be made. In any event, however, the present data clearly suggest that in terms of sheer frequency, the consumer crisis, if it does exist, is in the area of professional, tradesperson, and government services.

In concluding, it is important to repeat the observation that many legal debates involve assumptions about the extent or the nature of grievances and disputes that do not become formal legal cases; that is, those problems that exist below the waterline of the dispute iceberg. The present research has taken a preliminary step toward mapping "minor" consumer problems among a limited sample of Ontario households. While the study has uncovered a number of interesting facts, an equally important contribution is that it demonstrates the viability of the research methodology itself. Discussions about the effects of fee arrangements and indemnity rules, the effectiveness of legal aid schemes, the incidence of discrimination or uncompensated torts, the role of lawyers in informal dispute settlement, or the "litigation explosion," to name



just a few subject areas, involve assumptions about activities that precede formal litigation. Research focusing on specific problems and utilizing geographically representative samples of households can produce information bearing on the validity of these assumptions. Empirical data will not resolve all of the issues, particularly those involving value judgments, but they can identify the areas around which the real debate should centre.